

[STAFF WORKING DRAFT]

MAY 11, 2006

109TH CONGRESS
2ND SESSION

S. _____

To provide a national franchise and other regulatory relief to video service providers who offer a-la-carte programming for cable television, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY —, 2006

Mr. MCCAIN (for himself, Mr. _____, and Mr. _____) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide a national franchise and other regulatory relief to video service providers who offer a-la-carte programming for cable television, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumers Having Op-
5 tions in Cable Entertainment Act” or the “CHOICE Act”.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act:

3 (1) A-LA-CARTE.—The term “a-la-carte” means
4 offering a channel on an individual per-channel basis
5 rather than solely as part of a package or tier of
6 programming.

7 (2) DIGITAL VIDEO SERVICE.—The term “dig-
8 ital video service” means—

9 (A) the two-way transmission of video serv-
10 ice using digital video compression; and

11 (B) subscriber interaction, if any, required
12 for the selection or use of such service.

13 (3) ELIGIBLE VIDEO SERVICE PROVIDER.—The
14 term “eligible video service provider” means a video
15 service provider that—

16 (A)(i) has an attributable interest in a
17 cable channel (as defined in section 602(4) of
18 the Communications Act of 1934 (47 U.S.C.
19 522(24))) that is currently offered on the ex-
20 panded basic tier (within the meaning of section
21 623(b)(7) of that Act (47 U.S.C. 543(b)(7)));

22 (ii) offers that cable channel on an a-la-
23 carte basis to its subscribers of digital video
24 service in addition to any other channel bundles
25 it offers as of the date of enactment of this Act;

1 (iii) does not prohibit any other multi-
2 channel video programming distributor (as de-
3 fined in section 602(13) of the Communications
4 Act of 1934 (47 U.S.C. 522(24))) from offering
5 that channel on an a-la-carte basis to its sub-
6 scribers; and

7 (iv) files with the Commission a declara-
8 tion of intention to offer to its digital video
9 service subscribers on an a-la-carte basis any
10 cable channels it carries that are offered to it
11 on an a-la-carte basis; or

12 (B) does not have an attributable interest
13 in a cable channels but files with the Commis-
14 sion a declaration of intention to offer to its
15 digital video service subscribers on an a-la-carte
16 basis any cable channels it carries that are of-
17 fered to it on an a-la-carte basis.

18 (4) VIDEO SERVICE.—The term “video service”
19 means—

20 (A) video programming;

21 (B) interactive on demand services; and

22 (C) other programming services.

23 (5) VIDEO SERVICE PROVIDER.—The term
24 “video service provider”—

1 (A) means a provider of video service that
2 utilizes a public right-of-way in the provision of
3 such service; and

4 (B) does not include—

5 (i) a provider of direct broadcast sat-
6 ellite service;

7 (ii) any person providing video pro-
8 gramming to end users using radio com-
9 munication;

10 (iii) any other provider of video serv-
11 ice that does not use a public right-of-way
12 in the provision of its service; or

13 (iv) any person providing video service
14 by means of a commercial mobile service,
15 unless such person has substantially re-
16 placed an eligible video service provider de-
17 scribed in subparagraph (A) by occupying
18 a position in the video service market com-
19 parable to that occupied by such provider.

20 (b) COMMON TERMINOLOGY.—Except as otherwise
21 provided in subsection (a), terms used in this Act shall
22 have the same meaning given to such terms under sections
23 3, 332(d), and 602 of the Communications Act of 1934
24 (47 U.S.C. 153, 332(d), and 522).

1 **SEC. 3. REGULATORY RELIEF FOR ELIGIBLE VIDEO SERV-**
2 **ICE PROVIDERS.**

3 (a) ELIGIBLE VIDEO SERVICE PROVIDERS.—

4 (1) REGULATORY RELIEF.—An eligible video
5 service provider may not be required—

6 (A) to obtain a State or local video fran-
7 chise;

8 (B) to build out its video distribution sys-
9 tem in any particular manner; or

10 (C) to provide leased or common carrier
11 access to its video distribution facilities and
12 equipment to any other video service provider.

13 (2) BUILD-OUT ENCOURAGED; DISCRIMINATION
14 NOT PERMITTED.—It is the policy of the United
15 States that an eligible video service provider—

16 (A) should build out to provide service to
17 the greatest number of communities practicable;
18 and

19 (B) should comply fully with the require-
20 ments of sections 202 and 621(a)(3) of the
21 Communications Act of 1934 (47 U.S.C. 202
22 and 541(a)(3)) prohibiting the denial of access
23 to service of any group of residential sub-
24 scribers because of the income of residents of
25 the area in which the group resides.

1 (b) LOCAL GOVERNMENT AUTHORITY TO REGU-
2 LATE.—

3 (1) FEE FOR MANAGING LOCAL GOVERNMENT'S
4 PUBLIC RIGHTS-OF-WAY.—

5 (A) COMPENSATING LOCAL GOVERN-
6 MENTS.—

7 (i) IN GENERAL.—A local government
8 may require an eligible video service pro-
9 vider to pay a reasonable fee on an annual
10 basis to the units of local government in
11 which the video service provider provides
12 video service for the purpose of compen-
13 sating such local government for the costs
14 that it incurs in managing the public
15 rights-of-way used by such provider.

16 (ii) AMOUNT OF FEE.—The fee im-
17 posed under clause (i) shall not exceed 3.7
18 percent of gross video revenues. Notwith-
19 standing the preceding sentence, a local
20 government may petition the Commission
21 for, and the Commission may grant, a fee
22 that exceeds 3.7 percent of gross video rev-
23 enues to the extent that the local govern-
24 ment demonstrates that the higher fee is
25 necessary to cover its costs of managing

1 the public rights-of-way used by the pro-
2 vider.

3 (iii) IN-KIND CONTRIBUTIONS PRO-
4 VIDED TO STATE AND LOCAL GOVERN-
5 MENTS.—A local government may not so-
6 licit in-kind contributions from an eligible
7 video service provider unless the value of
8 the in-kind contribution is credited to the
9 provider as part of that fee described in
10 clause (i).

11 (iv) INSTITUTIONAL NETWORKS PRO-
12 VIDED TO STATE AND LOCAL GOVERN-
13 MENTS.—A local government may not so-
14 licit the provision of institutional network
15 services (as defined by the Federal Com-
16 munications Commission) from an eligible
17 video service provider on a free or reduced
18 fee basis unless the value of the services
19 provided for free, or the amount of the re-
20 duction in the fee, is credited to the pro-
21 vider as part of the fee described in clause
22 (i).

23 (B) DEFINITION.—For purposes of this
24 paragraph, the term “gross video revenues”—

1 (i) means all consideration of any
2 kind or nature received by an eligible video
3 service provider from its subscribers for
4 the provision of video service within a mu-
5 nicipality, including—

6 (I) cash;
7 (II) credits;
8 (III) property;
9 (IV) institutional networks; and
10 (IV) in-kind contributions (serv-
11 ices or goods); but

12 (ii) does not include—

13 (I) revenue not actually received,
14 even if billed, including bad debt;

15 (II) revenue received by any affil-
16 iate or any other person in exchange
17 for supplying goods or services used
18 by an eligible video service provider to
19 provide video service;

20 (III) refunds, rebates, or dis-
21 counts provided to—

22 (aa) subscribers;
23 (bb) leased access providers;
24 (cc) advertisers; or
25 (dd) the municipality;

1 (IV) revenue from services not
2 classified as video service, including—

3 (aa) revenue received from
4 telecommunications services;

5 (bb) revenue received from
6 information services, including
7 Internet access;

8 (cc) revenue received in con-
9 nection with advertising;

10 (dd) revenue received in con-
11 nection with home shopping serv-
12 ices; or

13 (ee) any other revenue at-
14 tributed by an eligible video serv-
15 ice provider to non-video service
16 in accordance with any applicable
17 rules, regulations, standards, or
18 orders;

19 (V) revenue paid by subscribers
20 to home shopping programmers di-
21 rectly from the sale of merchandise
22 through any home shopping channel
23 offered as part of the video service;

24 (VI) any tax of general applica-
25 bility—

1 (aa) imposed upon an eligi-
2 ble video service provider or upon
3 subscribers by a Federal, State,
4 city, or any other governmental
5 entity; and

6 (bb) required to be collected
7 by a eligible video service pro-
8 vider and remitted to the taxing
9 entity, including—

10 (AA) sales or use taxes;

11 (BB) gross receipts
12 taxes;

13 (CC) excise taxes;

14 (DD) utility users
15 taxes;

16 (EE) public service
17 taxes;

18 (FF) communication
19 taxes; and

20 (GG) the fee described
21 in subclause (VI);

22 (VII) the provision of video serv-
23 ice to public institutions, public
24 schools, or governmental entities at no
25 charge;

1 (VIII) any foregone revenue from
2 the provision of free or reduced-cost
3 video service by an eligible video serv-
4 ice provider to any person, includ-
5 ing—

6 (aa) the municipality;

7 (bb) other public institu-
8 tions; and

9 (cc) other institutions;

10 (IX) sales of capital assets or
11 sales of surplus equipment;

12 (X) reimbursement by program-
13 mers of marketing costs incurred by
14 an eligible video service provider for
15 the introduction or promotion of pro-
16 gramming;

17 (XI) directory or Internet adver-
18 tising revenue, including revenue
19 from—

20 (aa) yellow page sales;

21 (bb) white page sales;

22 (cc) banner advertisement;

23 and

24 (dd) electronic publishing;

25 and

1 (XII) copyright fees paid to the
2 United States Copyright Office.

3 (2) RIGHTS-OF-WAY DISPUTES TO BE RE-
4 SOLVED BY THE COMMISSION OR FEDERAL
5 COURTS.—Any dispute regarding the application or
6 amount of fees charged under paragraph (1) shall,
7 upon request of a local unit of government or af-
8 fected video service provider, be resolved—

9 (A) by the Commission; or

10 (B) by filing a claim in the district court
11 of the United States that meets applicable re-
12 quirements relating to venue under section
13 1931 of title 28, United States Code.

14 (3) FEE APPEARANCE ON SUBSCRIBER'S
15 BILL.—A video service provider may designate that
16 portion of a subscriber's bill attributable to the fee
17 imposed under paragraph (1) as a separate item on
18 the subscriber's bill.

19 (c) APPLICABILITY OF COMMUNICATIONS ACT OF
20 1934.—

21 (1) IN GENERAL.—Except as provided in this
22 subsection, the Communications Act of 1934 (47
23 U.S.C. 151 et seq.) shall not apply to the provision
24 of video service by an eligible video service provider.

1 (2) RETRANSMISSION CONSENT OBLIGA-
2 TIONS.—An eligible video service provider shall be
3 subject to the retransmission consent obligations of
4 section 325(b) of the Communications Act of 1934
5 (47 U.S.C. 325(b)).

6 (3) TITLE VI PROVISIONS.—An eligible video
7 service provider shall—

8 (A) not be subject to any provision of title
9 VI of the Communications Act of 1934 (47
10 U.S.C. 521 et seq.), except as otherwise pro-
11 vided in this paragraph;

12 (B) except as provided in paragraph (4),
13 carry and determine the appropriate channel
14 positioning and grouping, for the area in which
15 it is providing video service, of up to 3 public,
16 educational, or governmental use channels as
17 required under section 611 of that Act (47
18 U.S.C. 531);

19 (D) carry the signals of local commercial
20 television stations as required under section 614
21 of that Act (47 U.S.C. 534);

22 (E) carry the signals of local noncommer-
23 cial educational television stations as required
24 under section 615 of that Act (47 U.S.C. 535);

1 (F) be subject to the regulation of carriage
2 agreements under section 616 of that Act (47
3 U.S.C. 536);

4 (G) be subject to the antidiscrimination
5 provisions of section 621(a)(3) of that Act (47
6 U.S.C. 541(a)(3));

7 (H) be subject to the requirements regard-
8 ing obscene or indecent programming under
9 section 624(d)(2) of that Act (47 U.S.C.
10 544(d)(2));

11 (I) be entitled to the benefits and protec-
12 tions under section 624(f)(1) of that Act (47
13 U.S.C. 544(f)(1)) regarding the content of
14 video service;

15 (J) be subject to the emergency informa-
16 tion requirements under section 624(g) of that
17 Act (47 U.S.C. 544(g));

18 (K) be subject to the consumer electronics
19 equipment capability requirements under sec-
20 tion 624A of that Act (47 U.S.C. 545);

21 (L) be entitled to the benefits and protec-
22 tions under section 628 of that Act (47 U.S.C.
23 548);

24 (M) be subject to the requirements under
25 section 629 of that Act (47 U.S.C. 549);

1 (N) protect the personally identifiable in-
2 formation of its subscribers in the same manner
3 as is required of cable operators with respect to
4 subscribers to cable services under section 631
5 of that Act (47 U.S.C. 551);

6 (O) be entitled to the benefits and protec-
7 tions under section 633 of that Act (47 U.S.C.
8 553);

9 (P) be subject to the equal employment
10 provisions as required under subsections (a)
11 through (h) of section 634 of that Act (47
12 U.S.C. 554);

13 (Q) be subject to criminal or civil liability
14 under section 638 of that Act (47 U.S.C. 558);

15 (R) be subject to the penalties prescribed
16 for the transmission of obscene programming
17 under section 639 of that Act (47 U.S.C. 559);
18 and

19 (S) be required to comply with the scram-
20 bling requirements under section 640 of that
21 Act (47 U.S.C. 560).

22 (4) UTILIZATION AND OTHER REQUIREMENTS
23 FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL
24 CHANNELS.—

1 (A) WITHDRAWAL FOR INSUFFICIENT
2 USE.—Notwithstanding paragraph (1)(C), an
3 eligible video service provider—

4 (i) is not required to carry a public,
5 educational, or governmental channel that
6 has less than 8 hours programming per
7 day; and

8 (ii) may terminate carriage of any
9 such channel and reprogram it not less
10 than 30 days after notifying the fran-
11 chising authority of its intended action.

12 (B) REINSTATEMENT.—An eligible video
13 service provider shall restore carriage of a pub-
14 lic, educational, or governmental channel the
15 carriage of which was terminated under sub-
16 paragraph (A) when the entity responsible for
17 the channel certifies that it is ready, willing,
18 and able to provide at least 8 hours of daily
19 programming for the channel.

20 (C) NONREPEAT PROGRAMMING REQUIRE-
21 MENT.—At least 4 hours of the programming
22 required to meet the 8 hours of daily program-
23 ming for a public, educational, or governmental
24 channel shall be nonrepeat programming.

1 (D) OPERATIONAL RESPONSIBILITY.—The
2 operation of a public, educational, or govern-
3 mental channel shall be the responsibility of the
4 entity operating the channel and not the re-
5 sponsibility of the eligible video service provider.
6 The responsibility of the eligible video service
7 provider is limited to carriage of the channel.

8 (5) DETERMINATIONS OF LOCAL SIGNALS.—
9 For purposes of complying with subparagraphs (C)
10 and (D) of paragraph (1), an eligible video service
11 provider shall treat as local stations, with respect to
12 a customer located within the jurisdiction of any
13 franchising authority, the same stations that are
14 treated as local television stations for a cable system
15 located within such jurisdiction as of the date of en-
16 actment of this Act.

17 (6) IMPLEMENTATION.—

18 (A) REGULATIONS REQUIRED.—Not later
19 than 90 days after the date of enactment of
20 this Act, the Commission shall prescribe regula-
21 tions to implement the requirements of para-
22 graph (1) that are no greater or lesser than the
23 obligations required by the specifically ref-
24 erenced provisions of the Communications Act
25 of 1934 (47 U.S.C. 151 et seq.).

1 (B) EFFECTIVE DATE OF REGULATIONS.—

2 The regulations required under subparagraph
3 (A) shall take effect 6 months after the date of
4 enactment of this Act.

5 (7) PREEMPTION OF INCONSISTENT FRANCHISE
6 TERMS AND STATE AND LOCAL LAWS FOR ELIGIBLE
7 VIDEO SERVICE PROVIDERS.—

8 (A) IN GENERAL.—Any provision in any
9 franchise granted by a franchising authority to
10 an eligible video service provider, and any provi-
11 sion of State or local laws, regulations, or rules,
12 that is inconsistent with the provisions of this
13 Act is preempted and superseded.

14 (B) TREATMENT AS AN ELIGIBLE VIDEO
15 SERVICE PROVIDER.—Subparagraph (A) does
16 not apply to a franchise agreement—

17 (i) that is in effect on the date of en-
18 actment of this Act; and

19 (ii) pursuant to which a cable oper-
20 ator that is not an eligible video service
21 provider is operating.

22 (8) CABLE CHANNELS FOR PUBLIC, EDU-
23 CATIONAL, AND GOVERNMENTAL USE.—The govern-
24 mental entity that was the franchising authority for
25 a State or a political subdivision of a State on the

1 date of enactment of this Act, and any successor en-
2 tity, shall for that State or political subdivision de-
3 termine which public, educational, or governmental
4 entities shall be authorized to designate the channels
5 required under paragraph (1)(C).

6 (9) CONSUMER PROTECTION AND CUSTOMER
7 SERVICE.—

8 (A) REGULATIONS REQUIRED.—Not later
9 than 90 days after the date of enactment of
10 this Act, the Commission shall promulgate reg-
11 ulations with respect to customer service and
12 consumer protection requirements of the eligible
13 video service provider.

14 (B) EFFECTIVE DATE OF REGULATIONS.—
15 The regulations required under subparagraph
16 (A) shall take effect 6 months after the date of
17 enactment of this Act.

18 (C) PREEMPTION.—The regulations pro-
19 mulgated under subparagraph (A) preempt any
20 statute, regulation, or rule of any State or polit-
21 ical subdivision thereof under which liability
22 would be imposed on an eligible video service
23 provider for failure to comply with any statute,
24 regulation, or rule in pari materia with those
25 regulations, other than State laws that are not

1 specific to customer service and consumer pro-
2 tection requirements of the video service pro-
3 vider.

4 (10) STATE AND LOCAL GOVERNMENT AUTHOR-
5 ITY.—

6 (A) IN GENERAL.—Notwithstanding any
7 other provision of this Act, a State or local gov-
8 ernment shall have the authority to enforce the
9 requirements of paragraph (9)(A).

10 (B) LOCAL POINT OF CONTACT.—Each
11 State or local government shall designate a
12 local point of contact, which residents of such
13 geographic area may contact to alert such State
14 or local government of any potential violations
15 of the requirements and obligations established
16 under paragraph (9)(A).

17 (C) LIMITATION ON CLASS ACTIONS.—No
18 class action alleging a violation of the obliga-
19 tions set forth in the regulations promulgated
20 by the Commission under paragraph (9)(A)
21 shall be maintained under this subsection by an
22 individual or any private party in Federal or
23 State court.

24 (D) PARENS PATRIAE AUTHORITY.—In
25 any case in which a State or local government

1 has reason to believe that an act or practice vio-
2 lates the obligations set forth in the regulations
3 promulgated by the Commission under para-
4 graph (9)(A), the State or local government
5 may bring a civil action on behalf of the resi-
6 dents within its jurisdiction in a district court
7 of the United States of appropriate jurisdiction,
8 or any other court of competent jurisdiction,
9 to—

10 (i) enjoin the act or practice;

11 (ii) obtain—

12 (I) damages in the sum of actual
13 damages, restitution, or other com-
14 pensation on behalf of affected resi-
15 dents of the State or locality; and

16 (II) punitive damages, if the vio-
17 lation is willful or intentional; or

18 (iii) obtain such other legal and equi-
19 table relief as the court may consider to be
20 appropriate.

21 (E) LIMITATION.—In enforcing the re-
22 quirements of paragraph (6), a State or local
23 government may not impose additional obliga-
24 tions beyond those established by the Commis-
25 sion in paragraph (9)(A).

1 (d) COMMISSION TO ACT IF STATE COMMISSION
2 WILL NOT ACT.—If a State or local government fails to
3 carry out its enforcement responsibilities under subsection
4 (c)(7), the Commission shall—

5 (1) issue an order preempting the jurisdiction
6 of the State commission; and

7 (2) assume exclusive enforcement authority.

8 (e) ABILITY TO MANAGE PUBLIC RIGHTS-OF-WAY.—

9 (1) IN GENERAL.—Except as provided in this
10 section, nothing in this Act shall affect the authority
11 of a State or local government to manage the public
12 right-of-way in a manner that is—

13 (A) non-discriminatory;

14 (B) competitively neutral;

15 (C) consistent with applicable State law;

16 and

17 (D) not inconsistent with this Act.

18 (2) CONSTRUCTION PERMITS.—

19 (A) IN GENERAL.—In managing the public
20 rights-of-way a State or local government may
21 require the issuance of a construction permit,
22 without cost, to an eligible video service pro-
23 vider that is locating facilities in such public
24 right-of-way.

1 (B) RESPONSE WORK OR REPAIR.—If
2 there is an emergency necessitating response
3 work or repair in the public right-of-way, an eli-
4 gible video service provider may begin such
5 work or repair upon obtaining any required per-
6 mit or authorization without prior approval
7 from a State or local government, if such pro-
8 vider notifies the State or local government as
9 promptly as possible after beginning such work
10 or repair.

11 (3) TIMELY ACTION REQUIRED.—In managing
12 the public rights-of-way a State or local government
13 that is required to issue permits or licenses for such
14 use shall be required to act upon any such request
15 for use in a timely manner.

16 (4) NEW ROADS.—Nothing in this section shall
17 effect the ability of a State or local government to
18 impose reasonable limits on access to public rights-
19 of-way associated with newly constructed roads.

20 (f) CONFORMING AMENDMENTS TO THE COMMU-
21 NICATIONS ACT OF 1934.—

22 (1) POLE ATTACHMENTS.—Section 224 of the
23 Communications Act of 1934 (47 U.S.C. 224) is
24 amended—

1 (A) in subsection (a)(1), by striking “local
2 exchange carrier” and inserting “telecommuni-
3 cations carrier”;

4 (B) by striking subsections (a)(5) and
5 (d)(3);

6 (C) in subsection (d)(3), in the first sen-
7 tence by striking all after “cable television sys-
8 tem” through the period at the end and insert-
9 ing “and facilities of other video service pro-
10 viders, regardless of the nature of the services
11 provided.”; and

12 (D) by adding at the end the following:

13 “(j) WIRELESS SERVICE FACILITY EXEMPTION.—
14 Nothing in this section applies to a wireless service facil-
15 ity, including to towers of a provider of mobile services.”.

16 (2) CARRIAGE OF LOCAL COMMERCIAL TELE-
17 VISION SIGNALS.—Section 614(b)(4) of the Commu-
18 nications Act of 1934 (47 U.S.C. 534(b)(4)) is
19 amended to read as follows:

20 “(4) SIGNAL QUALITY.—

21 “(A) NON-DEGRADATION.—The signals of
22 local commercial television stations that a cable
23 operator carries shall be carried without mate-
24 rial degradation.

1 “(B) CARRIAGE STANDARDS.—The Com-
2 mission shall adopt carriage standards to en-
3 sure that, to the extent technically feasible, the
4 quality of signal processing and carriage pro-
5 vided by a cable system for the carriage of local
6 commercial television stations will be no less
7 than that provided by the system for carriage of
8 any other type of broadcast local commercial
9 television signal when using the same trans-
10 mission technology.”.

11 (3) CARRIAGE OF NONCOMMERCIAL EDU-
12 CATIONAL TELEVISION.—Section 615(g)(2) of the
13 Communications Act of 1934 (47 U.S.C. 535(g)(2))
14 is amended to read as follows—

15 “(2) BANDWIDTH AND TECHNICAL QUALITY.—A
16 cable operator shall—

17 “(A) provide each qualified local non-com-
18 mercial television station whose signal is carried
19 in accordance with this section with bandwidth
20 and technical capacity equivalent to that pro-
21 vided to commercial television stations carried
22 on the cable system when using the same trans-
23 mission technology; and

1 “(B) carry the signal of each qualified
2 local non-commercial educated television station
3 without material degradation.”.

4 (4) REGULATIONS REQUIRED.—Not later than
5 90 days after the date of enactment of this Act, the
6 Commission shall prescribe such regulations as may
7 be necessary to implement the amendments made by
8 this section.

9 (g) RULEMAKING ON SECTION 629.—Not later than
10 January 1, 2008, the Commission shall conduct a pro-
11 ceeding to determine the appropriateness of the require-
12 ments under subsection (c)(1)(L) taking into account
13 changes and advancements in technology.

14 **SEC. 4. BENEFIT OF NETWORK NON-DUPPLICATION RULES**
15 **TO BROADCASTERS.**

16 (a) IN GENERAL.—Notwithstanding any other provi-
17 sion of law, or any regulation promulgated by the Federal
18 Communications Commission, if a local commercial tele-
19 vision station is under common control with a cable chan-
20 nel the station may not have the benefit of the Commis-
21 sion’s network program non-duplication rules in subpart
22 F of part 76.92 of title 47, Code of Federal Regulations,
23 unless the cable channel is made available to multichannel
24 video programming distributors on an a-la-carte basis in

1 addition to any other channel bundles it offers to sub-
2 sscribers.

3 (b) DEFINITIONS.—In this section:

4 (1) COMMON CONTROL.—A local commercial
5 television station is considered to be under common
6 control with a cable channel if—

7 (A) it is owned by a person that has an at-
8 tributable interest in a cable channel; or

9 (B) is owned or controlled by a
10 corporation or other legal entity the chairman
11 or controlling shareholder of which—

12 (i) has an attributable interest in a
13 cable channel; or

14 (ii) owns or controls a cable channel.

15 (2) LOCAL COMMERCIAL TELEVISION STA-
16 TION.—The term “local commercial television sta-
17 tion” has the meaning given that term in section
18 614(h)(1) of the Communications Act of 1934 (47
19 U.S.C. 534(h)(1))).

20 **SEC. 5. ALTERNATIVE DISTRIBUTION OUTLETS.**

21 Section 616(a)(2) of the Communications Act of
22 1934 (47 U.S.C. 536(a)) is amended by striking “distribu-
23 tors” and inserting “distributors, or against other video
24 programming distributors using any medium or platform

1 for such programming distribution (including the Inter-
2 net),”.

3 **SEC. 6. FEDERAL COMMUNICATIONS COMMISSION TO AD-**
4 **MINISTER.**

5 The Federal Communications Commission may pre-
6 scribe such rules and regulations as may be necessary in
7 the public interest to carry out this Act.

8 **SEC. 7. SEVERABILITY.**

9 If any provision of this Act, an amendment made by
10 this Act, or the application of such provision or amend-
11 ment to any person or circumstance is held to be unconsti-
12 tutional, the remainder of this Act, the amendments made
13 by this Act, and the application of such provisions to any
14 person or circumstance shall not be affected thereby.

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